

1 FARLEY J. NEUMAN, ESQUIRE - State Bar #100021  
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3 JENKINS GOODMAN NEUMAN & HAMILTON LLP  
4 417 Montgomery Street, 10<sup>th</sup> Floor  
5 San Francisco, California 94104  
6 Telephone: (415) 705-0400  
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5 | Attorneys for ROBERT J. NAGY

6

7

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

12 UNITED STATES OF AMERICA.

**Plaintiff,**

14 | VS.

15 | CHARLES CATHCART, et al.,

## Defendants.

Case No. C-07-4762-PJH

**DECLARATION OF FARLEY J.  
NEUMAN AUTHENTICATING  
EXHIBITS TO DEFENDANT ROBERT  
NAGY'S MOTION TO SEVER CLAIMS  
AND TRANSFER VENUE**

Date: June 25, 2008

Time: 9:00 A.M.

Dept.: Room 3, 17<sup>th</sup> Floor

Trial Date: March 23, 2009

I, FARLEY J. NEUMAN, am an attorney duly licensed in the courts of the State of California and am a Partner at Jenkins Goodman Neuman & Hamilton LLP, attorneys of record for Defendant ROBERT J. NAGY.

1. Attached hereto as Exhibit A is a true and correct copy of the Declaration of Robert J. Nagy.

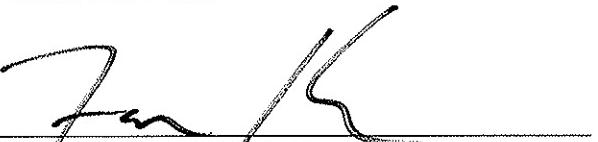
1           2. Attached hereto as Exhibit B is a true and correct copy of the Initial  
2 Disclosure of Defendant Robert J. Nagy Pursuant to Rule 26(a)(1) of the Federal Rules of  
3 Civil Procedure.

4           3. Attached hereto as Exhibit C is a true and correct copy of The United  
5 States's Initial Disclosures.

6           4. Attached hereto as Exhibit D is a true and correct copy of the District Court  
7 – Caseload Profiles for the Northern District of California and the District of South  
8 Carolina.

9  
10 DATED: May 2, 2008

JENKINS GOODMAN NEUMAN  
& HAMILTON LLP

11 By: 

12  
13 FARLEY J. NEUMAN  
14 Attorneys for ROBERT J. NAGY

## **EXHIBIT “A”**

1 FARLEY J. NEUMAN, ESQUIRE - State Bar #100021  
2 TOM PROUNTZOS, ESQUIRE - State Bar #209409  
3 JENKINS GOODMAN NEUMAN & HAMILTON LLP  
4 417 Montgomery Street, 10<sup>th</sup> Floor  
San Francisco, California 94104  
Telephone: (415) 705-0400  
Facsimile: (415) 705-0411

5 | Attorneys for ROBERT J. NAGY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA,  
12 Plaintiff,  
13 vs.  
14 CHARLES CHATHCART, SCOTT  
15 CATHCART, YURIJ DEBEVC, a/k/a  
YURI DEBEVC, ROBERT NAGY,  
DERIVIUM CAPITAL, LLC,  
DERIVIUM CAPITAL (USA), INC.,  
AND VERIDIA SOLUTIONS, LLC,  
16  
17 Defendants.

Case No. C-07-4762-PJH

**DECLARATION OF ROBERT J. NAGY  
IN SUPPORT OF MOTION TO SEVER  
ALL CLAIMS AND TRANSFER  
VENUE PURSUANT TO 28 U.S.C.  
1404(a)**

Date: June 25, 2008  
Time: 9:00 a.m.  
Dept.: Room 3, 17<sup>th</sup> Floor

Trial Date: March 23, 2009

I, Robert J. Nagy, under 28 U.S.C. § 1746, declare as follows:

1. I am a named defendant in the above-captioned lawsuit pending in the United States District Court for the Northern District of California.

2. This Declaration is submitted in conjunction with a Motion to Sever All Claims and Transfer Venue Pursuant to 28 U.S.C. 1404(a), which seeks to transfer all claims against me in the present suit from the United States District Court for the Northern District of California to the United States District Court for the District of South Carolina.

1       3. I currently reside in Charleston County, South Carolina. I am a licensed  
 2 certified public account in the State of South Carolina and maintain an accounting practice  
 3 located at 180 East Bay Street, Suite 201, Charleston, South Carolina. I was licensed in  
 4 1977, and have been a practicing accountant in South Carolina from 1974 to the present.

5       4. The current action for injunction against me by the United States is based in  
 6 part on alleged violations of Section 6700 of the Internal Revenue Code<sup>1</sup> ("Section 6700").  
 7 This action was commenced on September 17, 2007.

8       5. After the IRS initiated this injunction action and after I answered the  
 9 Complaint, the IRS then assessed me on December 27 and 28, 2007 with approximately  
 10 \$8.2 million in penalties under Section 6700 for the 1997 to the 2005 tax years. A notice  
 11 of federal tax lien was also filed against me based on these Section 6700 penalties. A true  
 12 and correct copy of the notice of assessments and notice of federal tax lien is attached as  
 13 Exhibit 1.

14       6. Within 30 days of being given notice of the assessments, and pursuant to  
 15 section 6703(c) of the Internal Revenue Code, I timely filed claims for refund with the IRS  
 16 on January 23, 2008 requesting that the IRS abate the \$8.2 million in Section 6700  
 17 penalties for the 1997 to the 2005 tax years. The basis for my claims for refund is that I  
 18 did not violate Section 6700.

19       7. If the claims for refund are allowed, the Section 6700 penalties will be  
 20 abated, and I will not be liable to the IRS. If the claims for refund are denied, I will  
 21 promptly file refund litigation against the United States in the United States District Court  
 22 for South Carolina under section 6703(c)(2) of the Internal Revenue Code and section  
 23 7422 of the Internal Revenue Code. Alternatively, if the IRS does not act on my claims for  
 24 refund within six months of the date I filed them, I will also file refund litigation against  
 25 the United States in the United States District Court for South Carolina pursuant to section

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26       <sup>1</sup>Title 26 of the United States Code.

1 6703(c)(2) of the Internal Revenue Code (“South Carolina Refund Litigation”).

2       8. I have retained Lindsey W. Cooper, Jr., an attorney in South Carolina, to  
 3 represent me with respect to the Section 6700 penalties and to file the South Carolina  
 4 Refund Litigation if my claims for refund are denied. It is my understanding that the  
 5 issues in the South Carolina Refund Litigation would be the same as those in the present  
 6 injunction action, as the activity or activities in which the IRS alleges I engaged are the  
 7 basis for both the injunction action and the penalty assessments. Nonetheless, because the  
 8 United States has pursued the injunction action in California, I am now compelled to deal  
 9 with these issues in two separate states, with two separate attorneys, resulting in  
 10 considerable additional time and expense.

11       9. I am informed and believe that if I pursue the South Carolina Refund  
 12 Litigation, I will be entitled to a trial by jury under the Seventh Amendment to the  
 13 Constitution. I intend to avail myself of this right to a jury trial.

14       10. I am also informed and believe that such refund litigation will involve a  
 15 determination of whether I violated Section 6700 of the Internal Revenue Code, which is  
 16 also an issue in the present injunction action.

17       11. I am further informed and believe that if the issue of whether I violated  
 18 Section 6700 is adjudicated in the present injunction action first, that I will be precluded or  
 19 estopped or otherwise prevented from litigating this issue in the refund action.

20       12. I am further informed and believe that I have no right to a jury trial in the  
 21 present action for injunction.

22       13. I am further informed and believe that if the issue of whether I violated  
 23 Section 6700 is adjudicated in the present injunction action and I am estopped from  
 24 litigating it in the South Carolina Refund Litigation, that I will be denied my right to a jury  
 25 trial with regard to that issue in violation of the Constitution.

26       14. Based on this potential deprivation of my constitutional right to a jury trial, I

1 intend to file a motion to stay the present injunction action immediately after I file the  
 2 South Carolina Refund Litigation.

3       15. I am informed and believe that this Court will be bound to grant a motion to  
 4 stay the proceedings pursuant to the precedent of *United States v. Nordbrock* (1991 9<sup>th</sup>  
 5 Cir.) 941 F.2d 947.

6       16. I have taken steps to try to expedite the apparent inevitable need to file the  
 7 South Carolina Refund Litigation, including requesting that the IRS deny my refund  
 8 claims immediately so that I may immediately file a refund action. I have also sent a  
 9 waiver of notice of disallowance to the IRS so my claims for refund could immediately be  
 10 denied. A copy of the Waiver of Statutory Notification of Claim Disallowance and cover  
 11 letter are attached as Exhibit 2. Mr. Cooper has also attempted to prompt the IRS to act.  
 12 None of our efforts, however, have resulted in action on my refund claims. I have been  
 13 informed by Mr. Cooper that he was told by Marie Allen, a Revenue Agent with the IRS,  
 14 that the IRS would not act on my refund claim "for a long time".

15       17. I have never been a member, manager or had any direct or indirect  
 16 ownership in Derivium Capital, LLC ("Derivium"). I have never been an employee of  
 17 Derivium.

18       18. Derivium was a client of my accounting firm for which I prepared tax returns  
 19 and provided tax advice regarding the 90% loan transactions. The advice I provide  
 20 concerning the 90% loan transactions was to my client Derivium.

21       19. In providing advice to Derivium, I mainly communicated with Charles  
 22 Cathcart who was a manager of Derivium and lived in Charleston, South Carolina. The  
 23 individuals with whom I communicated at Derivium were located in South Carolina as  
 24 Derivium is a South Carolina limited liability company.

25       20. Derivium's ongoing bankruptcy proceeding is in South Carolina, and its  
 26 corporate documents are in the possession of the trustee in Charleston, South Carolina.

1        21. I traveled to California one time in my capacity as Derivium's outside  
2 accountant or tax advisor. I never met or communicated with any Derivium borrowers  
3 while in California. I can only recall traveling to California two other times over the  
4 course of my life prior to the filing of this lawsuit. One trip was for business wholly  
5 unrelated to Derivium, and one trip was entirely personal.

6        22. In my answer to the United States' complaint, I denied that venue was  
7 appropriate in California for the reasons stated above. (Nagy Answer ¶¶1-2.)

8        23. The IRS assessed the Section 6700 penalties against me after filing the  
9 present injunction action, and I will be required to file my refund claim in South Carolina  
10 to dispute the assessments. It is a substantial burden and hardship to me to have to litigate  
11 the same Section 6700 issue in two separate proceedings and in two separate jurisdictions  
12 on opposite coasts. The IRS unilaterally caused this burden and procedural issue by  
13 waiting to assess the Section 6700 penalties until after it initiated the filing of the present  
14 lawsuit and by refusing to expeditiously act on my claims for refund.

15       24. By refusing to act quickly on my claim for refund, the IRS is causing me  
16 unnecessary time and expense, as well as interfering with the judicial economy of the  
17 Court's time.

18 I declare under penalty of perjury under the laws of the United States of America  
19 that the foregoing is true and correct.

Executed on April 29, 2008.

Robert J. Nagy  
180 East Bay Street, Suite 201  
Charleston, SC 29401



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224

SMALL BUSINESS / SELF-EMPLOYED DIVISION

Date: January 8, 2008

Robert Nagy  
PO Box 22765  
Charleston, SC 29413

**EXHIBIT**

1

Dear Mr. Nagy:

We have made assessments against you for the following:

| PERIOD                 | AMOUNT       | NOTES | TOTAL DUE             |
|------------------------|--------------|-------|-----------------------|
| IRC 6700<br>12/31/1997 | 16,000.00    |       | 16,000.00             |
| IRC 6700<br>12/31/1998 | 119,000.00   |       | 119,000.00            |
| IRC 6700<br>12/31/1999 | 388,000.00   |       | 388,000.00            |
| IRC 6700<br>12/31/2000 | 749,000.00   |       | 749,000.00            |
| IRC 6700<br>12/31/2001 | 519,000.00   |       | 519,000.00            |
| IRC 6700<br>12/31/2002 | 370,000.00   |       | 270,000.00            |
| IRC 6700<br>12/31/2003 | 231,000.00   |       | 231,000.00            |
| IRC 6700<br>12/31/2004 | 2,929,620.00 |       | 2,929,620.00          |
| IRC 6700<br>12/31/2005 | 2,873,188.00 |       | 2,873,188.00          |
| <b>TOTAL DUE</b>       |              |       | <b>\$8,094,808.00</b> |

See the enclosed notices for each period. Please send your payment for the above amount to the address shown below. If payment is not received within ten days from the date of this letter a Notice of Federal Tax Lien will be filed.

Generally, our practice is to deal directly with a taxpayer or a taxpayer's duly authorized representative. However, we sometimes talk with other persons, for example when we need information that the taxpayer has been unable to provide, or to verify information we have received.

We are writing to tell you that we may contact other persons. If we do contact other persons we will generally need to tell them limited information, such as your name. The law prohibits us from disclosing any more information than is necessary to obtain or verify the information we are seeking. Our need to contact other persons may continue as long as there is activity on this matter.

If you have any questions or need more information, please contact me at the address or telephone number listed below:

Internal Revenue Service  
450 Golden Gate Avenue, 6th Floor  
San Francisco, CA 94102

Phone#: 415-522-4194  
Fax#: 415-522-4156

Sincerely,



Gregory W. Gillen  
Revenue Officer  
Employee ID#: 68-11596

Enclosure: Form 3552  
Publication 1  
Publication 594

Form 668(Y)  
(Rev. 10-1999)

Department of the Treasury - Internal Revenue Service

## Notice of Federal Tax Lien

| Small Business/Self Employed Area: 7   | Serial Number<br>416679308 | For Optional Use by Recording Office |                           |                              |                                     |
|--|----------------------------|--------------------------------------|---------------------------|------------------------------|-------------------------------------|
|  |                            |                                      |                           |                              |                                     |
| <p>As provided by sections 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.</p> |                            |                                      |                           |                              |                                     |
| <p>Name of Taxpayer<br/>Robert J Nagy</p>  |                            |                                      |                           |                              |                                     |
| <p>Residence<br/>PO BOX 22765<br/>Charleston, SC 29412</p>   |                            |                                      |                           |                              |                                     |
| <p><b>IMPORTANT RELEASE INFORMATION:</b> For each assessment listed below, unless notice of lien is refiled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).</p>   |                            |                                      |                           |                              |                                     |
| Kind of Tax<br>(a)   | Tax Period Ended<br>(b)    | Identifying Number<br>(c)            | Date of Assessment<br>(d) | Last Day for Refiling<br>(e) | Unpaid Balance of Assessment<br>(f) |
| 6700   | 12/31/1997                 | XXX-XX-3584                          | 12/27/2007                | 01/27/2018                   | \$16,000.00                         |
| 6700   | 12/31/1998                 | XXX-XX-3584                          | 12/28/2007                | 01/27/2018                   | \$119,000.00                        |
| 6700   | 12/31/1999                 | XXX-XX-3584                          | 12/28/2007                | 01/27/2018                   | \$388,000.00                        |
| 6700   | 12/31/2000                 | XXX-XX-3584                          | 12/28/2007                | 01/27/2018                   | \$749,000.00                        |
| 6700   | 12/31/2001                 | XXX-XX-3584                          | 12/28/2007                | 01/27/2018                   | \$519,000.00                        |
| 6700   | 12/31/2002                 | XXX-XX-3584                          | 12/28/2007                | 01/27/2018                   | \$370,000.00                        |
| 6700   | 12/31/2003                 | XXX-XX-3584                          | 12/28/2007                | 01/27/2018                   | \$231,000.00                        |
| 6700   | 12/31/2004                 | XXX-XX-3584                          | 12/28/2007                | 01/27/2018                   | \$2,929,620.00                      |
| 6700   | 12/31/2005                 | XXX-XX-3584                          | 12/28/2007                | 01/27/2018                   | \$2,873,188.00                      |

| Place of Filing  | Total |                |
|--|-------|----------------|
| REGISTER OF DEEDS<br>2 COURTHOUSE SQUARE<br>CHARLESTON, SC 29402 |       | \$8,194,808.00 |

This notice was prepared and signed at LOS ANGELES, CA, on this, the 22nd day of January, 2008.

|                            |                             |
|----------------------------|-----------------------------|
| Signature                  | Title                       |
| Greg Gillen by Pamela Snow | Revenue Officer, 27-06-1312 |

(NOTE: Certificate of officer authorized by law to take acknowledgements is not essential to the validity of Notice of Federal Tax Lien Rev. Rul. 71-466, 1971-2 C.B. 409)

Part 2 - Taxpayer Copy

Form 668(Y) (Rev. 10-1999)



LINDSEY W. COOPER JR.

LWC@LWCOOPER.COM

February 12, 2008

**VIA FIRST-CLASS MAIL**

Marie Allen  
Internal Revenue Service  
4330 Watt Avenue  
Sacramento, CA 95821-5302

Re: Claims for Refund for Robert Nagy, SSN 249-90-1652

Dear Ms. Allen:

Please find enclosed two original copies of a Form 2297, Waiver of Statutory Notification of Claim Disallowance. I left a message for Robert Gee yesterday to schedule a conference so we can discuss Mr. Nagy's assessments and claims for refund. I would appreciate your assistance in setting up this conference.

Many thanks.

Sincerely yours,

Lindsey W. Cooper Jr.

Enclosures: Forms 2297.



- 1 -



**EXHIBIT “B”**

1 FARLEY J. NEUMAN, ESQUIRE - State Bar #100021  
 2 TOM PROUNTZOS, ESQUIRE – State Bar #209409  
 3 JENKINS GOODMAN NEUMAN & HAMILTON LLP  
 4 417 Montgomery Street, 10<sup>th</sup> Floor  
 San Francisco, California 94104  
 Telephone: (415) 705-0400  
 Facsimile: (415) 705-0411

5 Attorneys for DEFENDANT ROBERT J. NAGY

6

7

8 IN THE UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA  
 10 SAN FRANCISCO DIVISION

11  
 12 UNITED STATES OF AMERICA,

Plaintiff,

13 vs.

14 CHARLES CATHCART, SCOTT  
 15 CATHCART, YURIJ DEBEVC, a/k/a/  
 16 YURIJ DEBEVC, ROBERT NAGY,  
 17 DERIVIUM CAPITAL, LLC,  
 DERIVIUM CAPITAL (USA), INC.,  
 and VERIDIA SOLUTIONS, LLC,

18 Defendants.

19 Case No. C 07 4762 PJH

**INITIAL DISCLOSURE OF  
 DEFENDANT ROBERT J. NAGY  
 PURSUANT TO RULE 26(a)(1) OF THE  
 FEDERAL RULES OF CIVIL  
 PROCEDURE**

20 Defendant ROBERT J. NAGY makes this disclosure pursuant to Rule 26(a)(1) of  
 21 the Federal Rules of Civil Procedure. Defendant's investigation continues, and he  
 22 anticipates that new facts, documents and relevant information may be discovered.  
 23 Defendant will comply with his duty to supplement this disclosure as required by Rule 26.

24 A. The name and, if known, the address and telephone number of each individual  
 25 likely to have discoverable information that the disclosing party may use to support  
 its claims or defenses, unless solely for impeachment, identifying the subjects of the  
 26 information.

| Name, Address & Tel. No. (if known)   | Subject of Information  |
|---|---|
| <b>Robert J. Nagy</b><br><br>(This witness should be contacted through his counsel only.)   | All issues raised in the complaint and answer thereto, including but not limited to whether Mr. Nagy organized, sold, or participated in the organization or sale of, an entity, plan or arrangement; whether Mr. Nagy made or caused to be made false or fraudulent statements concerning tax benefits; and whether Mr. Nagy knew or had reason to know any alleged statements were false or fraudulent. |
| <b>Neva Gadsden</b><br><br>1 Poston Road, Suite 200<br>Charleston, SC 29407<br>(843) 566-0209   | All issues raised in the complaint and answer thereto, including but not limited to the 1998 IRS audit of Derivium Capital.   |
| <b>Mary S. Socks</b><br><br>Internal Revenue Service<br>11166 Main Street, Suite 500<br>Fairfax, VA 22030   | All issues raised in the complaint and answer thereto, including but not limited to the 1998 IRS audit of Derivium Capital.   |
| <b>Frank Guida</b><br><br>Internal Revenue Service<br>440 Roper Mt. Road, Suite E<br>Greenville, SC 29615   | All issues raised in the complaint and answer thereto, including but not limited to the 1998 IRS audit of Derivium Capital.   |
| <b>Marie Allen</b><br><br>4330 Watt Avenue<br>Sacramento, CA 95821<br>(916) 974-5302  | All issues raised in the complaint and answer thereto, including but not limited to IRS examination of Mr. Nagy with respect to IRC section 6700.   |
| <b>Lori Dixon</b><br><br>Internal Revenue Service<br>Hutchinson Metro Center<br>1200 Waters Place, Suite 108<br>Bronx, NY 10461<br>(718) 536-3683 | All issues raised in the complaint and answer thereto, including but not limited to IRS examination of Mr. Nagy with respect to IRC section 6700.   |
| <b>Robert Gee</b><br><br>450 Golden Gate Ave., Stop 6107  | All issues raised in the complaint and answer thereto, including but not limited to IRS examination of Mr. Nagy with respect to   |

|   |   |   |
|---|---|---|
| 1 | San Francisco, CA 94102<br>(415) 522-6119                                     | IRC section 6700.   |
| 2 | <b>Robert J. Brandenburg</b><br>109 President Circle<br>Summerville, SC 29483 | All issues raised in the complaint and answer thereto, including but not limited to the extent of Mr. Nagy's alleged participation in transactions of Derivium Capital. |
| 3 | <b>Timothy D. Scrantom</b><br>89 Wildrose Lane<br>Bozeman, MT 59715           | All issues raised in the complaint and answer thereto, including but not limited to the extent of Mr. Nagy's alleged participation in transactions of Derivium Capital. |
| 4 | <b>Yurij Debevc</b><br>1483 Burning Tree Road<br>Charleston, SC 29412         | All issues raised in the complaint and answer thereto, including but not limited to the extent of Mr. Nagy's alleged participation in transactions of Derivium Capital. |
| 5 | <b>Charles D. Cathcart</b><br>P.O. Box 754<br>Tuxedo Park, NY 10987           | All issues raised in the complaint and answer thereto, including but not limited to the extent of Mr. Nagy's alleged participation in transactions of Derivium Capital. |
| 6 | <b>Scott Cathcart</b><br>32 Fern Hill Avenue<br>Ross, CA 94957                | All issues raised in the complaint and answer thereto, including but not limited to the extent of Mr. Nagy's alleged participation in transactions of Derivium Capital. |

A copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment.

| Category  | Location   |
|---|--|
| Memoranda prepared by Mr. Nagy concerning tax implications of the stock loans.                                    | Charleston, South Carolina, in the possession, custody, or control of Mr. Nagy (who should be contacted through his counsel only). |
| Documents regarding payment to Mr. Nagy from Co-Defendant(s).   | Same as above.   |
| Documents regarding the IRS audit of Derivium, including "No Change" letter.                                      | Same as above.   |
| Examination change reports for tax payers participating in stock loans, showing no penalties ultimately assessed. | Same as above.   |
| Stock loan documents.   | Same as above.   |

1  
2 B. A computation of any category of damages claimed by the disclosing party, making  
3 available for inspection and copying as under Rule 34 the documents or other  
evidentiary material, not privileged or protected from disclosure, on which such  
computation is based, including materials bearing on the nature and extent of  
injuries suffered.  
4

5 Not applicable as Mr. Nagy has claimed no damages in this action.  
6

7 C. For inspection and copying as under Rule 34 any insurance agreement under which  
any person carrying on an insurance business may be liable to satisfy part or all of a  
judgment which may be entered in the action or to indemnify or reimburse for  
payments made to satisfy the judgment.  
8

9 Not applicable as the United States has not sought judgment for any monetary sums  
in this action.  
10

11 DATED: February 22, 2008  
12

JENKINS GOODMAN NEUMAN  
& HAMILTON LLP

13 By:  
14

  
15 FARLEY J. NEUMAN  
TOM PROUNTZOS  
16 Attorneys for DEFENDANT ROBERT J.  
NAGY  
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**PROOF OF SERVICE**CASE NAME: *United States of America v. Charles Cathcart, et al.*,

CASE NUMBER: C 07 4762 PJH

DATE OF SERVICE: February 22, 2008

**DESCRIPTION OF DOCUMENTS SERVED:****INITIAL DISCLOSURE OF DEFENDANT ROBERT J. NAGY  
PURSUANT TO RULE 26(a)(1) OF THE FEDERAL RULES OF  
CIVIL PROCEDURE****SERVED ON THE FOLLOWING:**

| <i>Attorneys for United States</i>           | <i>Attorney for Yurij Debevc</i>               |
|--|--|
| SCOTT N. SCHOOLS                             | Yurij Debevc                                   |
| United States Attorney                       | 1483 Burningtree Road                          |
| THOMAS MOORE, Assistant United States        | Charleston, SC 29414                           |
| Attorney                                     | Tele: [834] 762-6116                           |
| Chief, Tax Division                          |  |
| 9 <sup>th</sup> Floor Federal Building       |  |
| 450 Golden Gate Avenue, Box 36055            |  |
| San Francisco, CA 94102                      |  |
| Tel. 415.436.6935                            |  |
| HUONG T. BAILIE, Special Trial Attorney      |  |
| 160 Spear Street, 9 <sup>th</sup> Floor      |  |
| San Francisco, CA 94105                      |  |
| Tel. 415.227.5123                            |  |
| ALLYSON B. BAKER                             |  |
| Trial Attorney                               |  |
| Tax Division                                 |  |
| U.S. Department of Justice                   |  |
| P.O. Box 7238                                |  |
| Washington, D.C. 20044                       |  |
| Tel. 202.353.8031                            |  |
| <i>Attorney For Defendant Scott Cathcart</i> | <i>Attorney for Defendant Charles Cathcart</i> |
| David B. Porter                              | Eric L. Webb                                   |
| WOOD & PORTER, P.C.                          | BARTSCH & WEBB                                 |
| 333 Sacramento Street                        | 317 Rosecrans Avenue                           |
| San Francisco, CA 94111                      | Manhattan Beach, CA 90266                      |
| Tele: [415] 834-0117                         | Tele: [310] 546-4004                           |
| Fax: [415] 834-1888                          | Fax: [310] 546-4033                            |

I am over the age of 18 years and not a party to or interested in the above-named case. I am an employee of Jenkins Goodman Neuman & Hamilton LLP, and my business address is 417 Montgomery Street, 10<sup>th</sup> Floor, San Francisco, CA 94104. On the date stated above, I served a true copy of the document(s) described above, by mail, by placing said document(s) in an envelope, addressed as shown above for collection and mailing on the date shown above following the ordinary business practices of Jenkins Goodman Neuman & Hamilton LLP. I am readily familiar with my firm's practice for collection and

1 processing of correspondence for mailing with the United States Postal Service. Under  
2 that practice, said document(s) would be deposited with the United States Postal Service at  
3 a post box in San Francisco, California on the same day (at approximately 5:00 P.M.) with  
4 postage thereon fully prepaid for first class mail.

5  
6 I declare under penalty of perjury under the laws of the State of California that the  
7 foregoing is true and correct and that this declaration was executed on the date stated  
8 above.  
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25  
26

*N. Sands*

Nikki Sands

**EXHIBIT “C”**

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13  
14 IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

15 UNITED STATES OF AMERICA

16 Plaintiff,

17 v.

19 CHARLES CATHCART *et al.*

20 Defendants.

) Civil No. 07-4762-PJH

) THE UNITED STATES'S  
INITIAL DISCLOSURES

21  
22 Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, defendant, the United States of  
23 America makes the following initial disclosures:

24 **I. Individuals**

25 The following individuals may have discoverable information that the United States may  
26 use to support its claims or defenses in this case:

1       A. The following individuals may have information relating to (I) the promotion,  
2 execution, mechanics, history, scope, and extent of any tax-fraud scheme promoted and/or  
3 organized by the defendants, including the 90% Loan programs, as those programs are described  
4 in the complaint and/or (ii) the role of any entity by or related to any defendant, including  
5 Derivium Capital, LLC, Derivium (USA), Inc., Veridia Solutions, BVL, Optech Limited, Whitco,  
6 in promoting and/or organizing any aspect of any tax-fraud scheme, including the 90% Loan  
7 programs, as those programs are described in the complaint:

- 8           1.     Charles Cathcart  
9                   c/o Eric Webb  
10                  Bartsch & Webb  
11                  317 Rosecrans Avenue  
12                  Manhattan Beach, California 90266
- 13           2.     Scott Cathcart  
14                   c/o David Bujannoff Porter , Jr.  
15                  Wood & Porter  
16                  333 Sacramento Street  
17                  San Francisco, CA 94111
- 18           3.     Yuri Debevc  
19                  1483 Burningtree Road  
20                  Charleston, SC 29412
- 21           4.     Robert Nagy  
22                  c/o Farley J. Neuman  
23                  Tom Prountzos  
24                  Jenkins Goodman Neuman & Hamilton LLP  
25                  417 Montgomery Street, 10<sup>th</sup> Floor  
26                  San Francisco, CA 94104
- 27           5.     Randolph Anderson  
28                  Charleston, South Carolina
- 29           6.     Robert Brandenburg  
30                  Charleston, South Carolina
- 31           7.     Mark Broadwater  
32                  Charleston, South Carolina
- 33           8.     Jack Flader  
34                  157 Hong Lok East  
35                  Hong Lok Hong Kok Yuen Po Nt.  
36                  Hong Kong
- 37           9.     Chi-Hsu Hsin  
38                  321 Courthouse Road

1                   Franklin Square, New York 11010-3936  
2

- 3                   10. Bryan Jeeves  
4                   Jeeves Group of Companies  
5                   Bahnhofstrasse 7  
6                   Schaan  
7                   Lichtenstein  
8  
9                   11. Ron Jenkins  
10                  Charleston, South Carolina  
11  
12                  12. Patrick Kelley  
13                  Charleston, South Carolina  
14  
15                  13. David Lancaster  
16                  California  
17  
18                  14. Clifford Lloyd  
19                  142 James St. S.  
20                  Hamilton, Ontario, L8P 3A2  
21  
22                  15. Jerry Pryor  
23                  Charleston, South Carolina  
24  
25                  16. Catherine Sandifer  
26                  London, England  
27  
28                  17. Jonathan Sandifer  
29                  London, England  
30  
31                  18. Timothy Scrantom  
32                  Montana  
33  
34                  19. Allison Skinner  
35                  Charleston, South Carolina  
36  
37                  20. Franklin Thomason  
38                  11469 West Camdon Drive  
39                  Casa Grande, Arizona 85222

40  
41                  21. To the extent not mentioned above, current or former employees of the following  
42                  companies with information relating to that company's involvement with the promotion,  
43                  organization, and/or execution of the 90% Loan programs, as those programs are described in the  
44                  complaint:

- 45  
46                  a.       Scienda LLC  
47                  Charleston, South Carolina  
48

- 1        b.     Shenandoah Holdings, LLC (Nevada)
- 2        c.     Diversified Design Associates, Ltd. (South Carolina)
- 3        d.     Bancroft Ventures Limited  
4              Douglas, Isle of Man, British Isles
- 5        e.     Optech Limited  
6              590 Madison Avenue, 31<sup>st</sup> Floor  
7              New York, New York 10022
- 8        f.     Spencer Partners
- 9        g.     WITCO  
10          London, England
- 11       h.     Veristeel  
12          Nevada

13       B. The following individuals may have information relating to the role of any banks,  
14      investment banks, broker-dealers and/or other financial institutions in the promotion, execution,  
15      and/or organization of any tax-fraud scheme promoted or organized by defendants, including the  
16      90% Loan programs, as those programs are described in the complaint:

- 1        1.     Robert Gooch  
2              Morgan Keegan and Company, Inc.  
3              Memphis, Tennessee
- 4        2.     George Gordon  
5              Wachovia Corporation  
6              Richmond, Virginia
- 7        3.     Kevin Haase  
8              Janney Montgomery Scott, LLC  
9              Philadelphia, Pennsylvania
- 10       4.     David Johansen  
11              Napa Valley, California
- 12       5. One or more individuals employed currently or previously by Wachovia Corporation  
13      with information relating to that company's involvement with the promotion, organization and/or  
14      execution of the 90% Loan programs, as those programs are described in the complaint.
- 15       6. One or more individuals employed currently or previously by Morgan Keegan and  
16      Company, Inc. with information relating to that company's involvement with the promotion,

1 organization and/or execution of the 90% Loan programs, as those programs are described in the  
2 complaint.

3       7. One or more individuals employed currently or previously by Janney Montgomery  
4 Scott, LLC with information relating to that company's involvement with the promotion,  
5 organization, and/or execution of the 90% Loan programs, as those programs are described in the  
6 complaint.

7

8           C. The following individuals may have information relating to the false and/or fraudulent  
9 statements made by defendants, and/or any entities owned, operated, or affiliated with defendants  
10 in connection with their promotion, execution, and/or organization of the 90% Loan programs:

- 11       1. Arline Baker  
12                   Pennsylvania
- 13       2. Chris Benigno  
14                   Texas
- 15       3. Ted Bush  
16                   California
- 17       4. Ellen Carrie  
18                   Texas
- 19       5. Robert G. Fisher  
20                   Texas
- 21       6. Donald Hancock  
22                   Fair Oaks, California
- 23       7. Hammond  
24                   Texas
- 25       8. Douglas Hartman  
26                   California
- 27       9. Members of the Newton Family  
28                   Wyoming
10. Daryl Paules  
11. Richard Potempa  
12. Colorado

12. Robert Sablehaus  
Baltimore, Maryland

13. Jing Li Sun  
California

14. Jiong Sun  
California

15. David Welch  
Menlo Park, California

## **II. Documents**

The United States has the following categories of documents within its possession, custody or control that it may use to support its claims or defenses in this case:

- A. Defendants' promotional materials relating to the 90% Loan programs.
  - B. Master Loan Agreements executed by defendants and/or related entities in connection with the 90% Loan programs.
  - C. Investment and Loan Agreements executed by defendants in connection with the 90% Loan programs.
  - D. Stock Loan Administration Agreements executed by defendants in connection with the 90% Loan programs.
  - E. Incorporation documents for companies operated by and/or affiliated with defendants in connection with their promotion, execution and organization of the 90% Loan programs.
  - F. Incorporation documents for companies founded by Charles Cathcart and/or other defendants with the proceeds they received from the 90% Loan programs.
  - G. Defendants' individual and corporate tax returns.
  - H. Lists of customers who participated in the 90% Loan programs.
  - I. Documents reflecting defendants' customers' 90% Loan program transactions.
  - J. Lists of qualified advisors for Derivium Capital, LLC and its related entities.
  - K. The following publicly available documents:

1           1. Court filings in the related cases referenced in Part No. 9 of the Parties' Joint  
2 Case Management Statement, filed December 28, 2007, Dkt. # 22.

3           2. Court documents from People of the State of California v. Derivium Capital,  
4 LLC, et al., Case No. 02AS05849.

5           3. News articles discussing Charles Cathcart, Derivium Capital, LLC, and/or the  
6 90% Loan programs, as they are described in the complaint.

7 **III. Damages**

8           The United States is not seeking damages in this cases.

9 **IV. Insurance Agreements**

10          Insurance agreements are not applicable to this case.

12 February 25, 2008

13           Respectfully submitted,

14           JOSEPH P. RUSSONIELLO  
15           United States Attorney

16           \_\_\_\_\_  
17           /s/ Allyson B. Baker  
18           ALLYSON B. BAKER  
19           Trial Attorney, Tax Division  
20           U.S. Department of Justice  
21           Post Office Box 7238  
22           Ben Franklin Station  
23           Washington, D.C. 20044  
24           Telephone: (202) 353-8031

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that service of the foregoing has been made upon the following by depositing a copy in the United States mail, postage prepaid, and through e-mail, this 11<sup>th</sup> day of February, 2008.

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*Attorney for Charles Cathcart*

/s/ Allyson B. Baker  
**ALLYSON B. BAKER**

**EXHIBIT “D”**

# U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

|                                   |  | 12-MONTH PERIOD ENDING<br>SEPTEMBER 30 |                 |       |       |       |       |                    |         |    |
|-----------------------------------|--|--|-----------------|-------|-------|-------|-------|--------------------|---------|----|
| CALIFORNIA NORTHERN               |  | 2007                                   | 2006            | 2005  | 2004  | 2003  | 2002  | Numerical Standing |         |    |
| OVERALL<br>CASELOAD<br>STATISTICS | Filings*   | 7,970                                  | 8,683           | 6,362 | 6,727 | 6,919 | 7,887 | U.S.               | Circuit |    |
|                                   | Terminations                                       | 6,777                                  | 6,983           | 6,966 | 6,471 | 7,094 | 6,675 |                    |         |    |
|                                   | Pending  | 9,005                                  | 8,157           | 6,557 | 7,267 | 7,567 | 7,958 |                    |         |    |
|                                   | % Change in Total Filings                          | Over Last Year                         |                 | -8.2  |       |       |       | 79                 | 15      |    |
|                                   |  | Over Earlier Years                     |                 | 25.3  | 18.5  | 15.2  | 1.1   | 35                 | 5       |    |
| Number of Judgeships              |  | 14                                     | 14              | 14    | 14    | 14    | 14    |                    |         |    |
| Vacant Judgeship Months**         |  | .0                                     | .0              | .0    | .0    | 3.1   | 12.0  |                    |         |    |
| ACTIONS<br>PER<br>JUDGESHIP       | FILINGS  | Total                                  | 569             | 620   | 455   | 480   | 494   | 563                | 15      | 4  |
|                                   |  | Civil                                  | 505             | 558   | 390   | 413   | 424   | 510                | 8       | 2  |
|                                   |  | Criminal Felony                        | 33              | 37    | 39    | 44    | 47    | 42                 | 86      | 14 |
|                                   |  | Supervised Release Hearings**          | 31              | 25    | 26    | 23    | 23    | 11                 | 28      | 10 |
|                                   | Pending Cases                                      |  | 643             | 583   | 468   | 519   | 541   | 568                | 12      | 2  |
|                                   | Weighted Filings**                                 |  | 624             | 621   | 543   | 581   | 631   | 598                | 8       | 2  |
|                                   | Terminations                                       |  | 484             | 499   | 498   | 462   | 507   | 477                | 30      | 7  |
|                                   | Trials Completed                                   |  | 8               | 8     | 10    | 10    | 11    | 11                 | 92      | 14 |
|                                   | MEDIAN<br>TIMES<br>(months)                        | From Filing to Disposition             | Criminal Felony | 12.4  | 11.2  | 12.6  | 11.1  | 11.7               | 11.8    | 82 |
|                                   |  |  | Civil**         | 6.7   | 7.4   | 9.8   | 8.2   | 10.6               | 9.5     | 11 |
|                                   |  | From Filing to Trial** (Civil Only)    |                 | 24.9  | 25.0  | 28.0  | 22.5  | 30.3               | 23.5    | 46 |
| OTHER                             | Civil Cases Over 3 Years Old**                     | Number                                 | 393             | 528   | 530   | 430   | 377   | 475                |         |    |
|                                   |  | Percentage                             | 4.7             | 7.3   | 9.5   | 6.9   | 5.7   | 6.7                | 51      | 5  |
|                                   | Average Number of Felony Defendants Filed Per Case |  |                 | 1.2   | 1.5   | 1.5   | 1.4   | 1.5                | 1.4     |    |
|                                   | Jurors   | Avg. Present for Jury Selection        |                 | 53.81 | 59.09 | 55.21 | 61.19 | 65.00              | 66.42   |    |
|                                   |  | Percent Not Selected or Challenged     |                 | 41.9  | 43.2  | 31.0  | 48.9  | 40.9               | 47.2    |    |

## 2007 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE

| Type of   | TOTAL | A   | B   | C    | D  | E  | F   | G   | H   | I   | J   | K   | L    |
|-----------|-------|-----|-----|------|----|----|-----|-----|-----|-----|-----|-----|------|
| Civil     | 7074  | 122 | 975 | 1610 | 94 | 44 | 534 | 527 | 243 | 533 | 732 | 422 | 1238 |
| Criminal* | 455   | 6   | 72  | 162  | 40 | 64 | 11  | 38  | 5   | 6   | 16  | 15  | 20   |

\* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.

\*\* See "Explanation of Selected Terms."

**U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE**

|                                   |  | 12-MONTH PERIOD ENDING SEPTEMBER 30 |       |        |        |       |       |                    |         |
|-----------------------------------|--|-------------------------------------|-------|--------|--------|-------|-------|--------------------|---------|
| SOUTH CAROLINA                    |  | 2007                                | 2006  | 2005   | 2004   | 2003  | 2002  | Numerical Standing |         |
| OVERALL<br>CASELOAD<br>STATISTICS | Filings*   | 5,508                               | 4,670 | 4,875  | 24,510 | 5,210 | 5,211 | U.S.               | Circuit |
|                                   | Terminations                                       | 5,370                               | 4,984 | 25,042 | 5,377  | 4,981 | 4,685 |                    |         |
|                                   | Pending  | 3,877                               | 3,705 | 3,964  | 24,228 | 5,167 | 4,988 |                    |         |
|                                   | % Change in Total Filings                          | Over Last Year                      |       | 17.9   |        |       |       | 7                  | 1       |
|                                   |  | Over Earlier Years                  |       | 13.0   | -77.5  | 5.7   | 5.7   | 23                 | 3       |
| Number of Judgeships              |  | 10                                  | 10    | 10     | 10     | 10    | 10    |                    |         |
| Vacant Judgeship Months**         |  | .0                                  | .0    | .0     | 8.8    | 9.4   | 2.1   |                    |         |
| ACTIONS<br>PER<br>JUDGESHIP       | FILINGS  | Total                               | 551   | 468    | 488    | 2,452 | 521   | 522                | 17      |
|                                   |  | Civil                               | 440   | 363    | 397    | 2,360 | 428   | 433                | 11      |
|                                   |  | Criminal Felony                     | 86    | 80     | 76     | 78    | 83    | 84                 | 33      |
|                                   |  | Supervised Release Hearings**       | 25    | 25     | 15     | 14    | 10    | 5                  | 41      |
|                                   | Pending Cases                                      |                                     | 388   | 371    | 396    | 2,423 | 517   | 499                | 40      |
|                                   | Weighted Filings**                                 |                                     | 519   | 462    | 514    | 2,454 | 505   | 521                | 24      |
|                                   | Terminations                                       |                                     | 537   | 498    | 2,504  | 538   | 498   | 469                | 18      |
|                                   | Trials Completed                                   |                                     | 39    | 39     | 22     | 20    | 20    | 20                 | 7       |
| MEDIAN<br>TIMES<br>(months)       | From Filing to Disposition                         | Criminal Felony                     | 8.5   | 8.9    | 8.6    | 8.7   | 8.5   | 8.6                | 43      |
|                                   |  | Civil**                             | 8.0   | 9.5    | 9.0    | 9.4   | 8.2   | 7.5                | 28      |
|                                   | From Filing to Trial** (Civil Only)                |                                     | 18.5  | 21.8   | 21.0   | 20.0  | 22.5  | 16.5               | 17      |
| OTHER                             | Civil Cases Over 3 Years Old**                     | Number                              | 35    | 91     | 74     | 918   | 68    | 45                 |         |
|                                   |  | Percentage                          | 1.2   | 3.1    | 2.3    | 3.9   | 1.6   | 1.1                | 6       |
|                                   | Average Number of Felony Defendants Filed Per Case |                                     | 1.7   | 1.7    | 1.8    | 1.6   | 1.7   | 1.8                |         |
|                                   | Jurors   | Avg. Present for Jury Selection     | 47.08 | 39.24  | 47.92  | 30.59 | 37.98 | 31.15              |         |
|                                   |  | Percent Not Selected or Challenged  | 20.3  | 17.0   | 13.4   | 13.2  | 25.7  | 17.4               |         |

**2007 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE**

| Type of   | TOTAL | A   | B   | C    | D   | E   | F   | G   | H   | I  | J   | K  | L   |
|-----------|-------|-----|-----|------|-----|-----|-----|-----|-----|----|-----|----|-----|
| Civil     | 4403  | 175 | 423 | 1839 | 24  | 193 | 308 | 425 | 398 | 98 | 401 | 13 | 106 |
| Criminal* | 849   | 8   | 169 | 77   | 279 | 156 | 27  | 24  | 39  | 38 | 5   | 5  | 22  |

\* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.

\*\* See [Explanation of Selected Terms](#).